
SUBSTITUTE SENATE BILL 5027

State of Washington

66th Legislature

2019 Regular Session

By Senate Law & Justice (originally sponsored by Senators Frockt, Carlyle, Palumbo, Wellman, Pedersen, Keiser, Saldaña, Mullet, and O'Ban)

1 AN ACT Relating to extreme risk protection orders; and amending
2 RCW 7.94.120, 7.94.010, 7.94.030, 7.94.040, 7.94.060, and 7.94.150.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 7.94.120 and 2017 c 3 s 13 are each amended to read
5 as follows:

6 (1) Any person who files a petition under this chapter knowing
7 the information in such petition to be materially false, or with
8 intent to harass the respondent, is guilty of a gross misdemeanor.

9 (2) Any person who has in his or her custody or control,
10 purchases, possesses, or receives a firearm with knowledge that he or
11 she is prohibited from doing so by an order issued under this chapter
12 is guilty of a gross misdemeanor, and further is prohibited from
13 having in his or her custody or control, purchasing, possessing, or
14 receiving, or attempting to purchase or receive, a firearm for a
15 period of five years from the date the existing order expires.
16 However, such person is guilty of a class C felony if the person has
17 (~~two~~) one or more previous convictions for violating an order
18 issued under this chapter.

19 **Sec. 2.** RCW 7.94.010 and 2017 c 3 s 1 are each amended to read
20 as follows:

1 (1) Chapter 3, Laws of 2017 is designed to temporarily prevent
2 individuals who are at high risk of harming themselves or others from
3 accessing firearms by allowing family, household members, and police
4 to obtain a court order when there is demonstrated evidence that the
5 person poses a significant danger, including danger as a result of
6 (~~a dangerous mental health crisis~~) threatening or violent behavior.

7 (2) Every year, over one hundred thousand people are victims of
8 gunshot wounds and more than thirty thousand of those victims lose
9 their lives. Over the last five years for which data is available,
10 one hundred sixty-four thousand eight hundred twenty-one people in
11 America were killed with firearms—an average of ninety-one deaths
12 each day.

13 (3) Studies show that individuals who engage in certain dangerous
14 behaviors are significantly more likely to commit violence toward
15 themselves or others in the near future. These behaviors, which can
16 include other acts or threats of violence, self-harm, or the abuse of
17 drugs or alcohol, are warning signs that the person may soon commit
18 an act of violence.

19 (4) Individuals who pose a danger to themselves or others often
20 exhibit signs that alert family, household members, or law
21 enforcement to the threat. Many mass shooters displayed warning signs
22 prior to their killings, but federal and state laws provided no clear
23 legal process to suspend the shooters' access to guns, even
24 temporarily.

25 (5) In enacting (~~this initiative [chapter 3, Laws of 2017]~~)
26 chapter 3, Laws of 2017, it is the purpose and intent of the people
27 to reduce gun deaths and injuries, while respecting constitutional
28 rights, by providing a court procedure for family, household members,
29 and law enforcement to obtain an order temporarily restricting a
30 person's access to firearms. Court orders are intended to be limited
31 to situations in which the person poses a significant danger of
32 harming themselves or others by possessing a firearm and include
33 standards and safeguards to protect the rights of respondents and due
34 process of law.

35 **Sec. 3.** RCW 7.94.030 and 2017 c 3 s 4 are each amended to read
36 as follows:

37 There shall exist an action known as a petition for an extreme
38 risk protection order.

1 (1) A petition for an extreme risk protection order may be filed
2 by (a) a family or household member of the respondent or (b) a law
3 enforcement officer or agency.

4 (2) A petition for an extreme risk protection order may be
5 brought against a respondent under the age of eighteen years. No
6 guardian or guardian ad litem need be appointed on behalf of a
7 respondent to an action under this chapter if such respondent is
8 sixteen years of age or older. If a guardian ad litem is appointed
9 for the petitioner or respondent, the petitioner must not be required
10 to pay any fee associated with such appointment.

11 (3) An action under this chapter must be filed in the county
12 where the petitioner resides or the county where the respondent
13 resides.

14 (~~(3)~~) (4) A petition must:

15 (a) Allege that the respondent poses a significant danger of
16 causing personal injury to self or others by having in his or her
17 custody or control, purchasing, possessing, accessing, or receiving a
18 firearm, and be accompanied by an affidavit made under oath stating
19 the specific statements, actions, or facts that give rise to a
20 reasonable fear of future dangerous acts by the respondent;

21 (b) Identify the number, types, and locations of any firearms the
22 petitioner believes to be in the respondent's current ownership,
23 possession, custody, access, or control;

24 (c) Identify whether there is a known existing protection order
25 governing the respondent, under chapter 7.90, 7.92, 10.14, 9A.46,
26 10.99, 26.50, or 26.52 RCW or under any other applicable statute; and

27 (d) Identify whether there is a pending lawsuit, complaint,
28 petition, or other action between the parties to the petition under
29 the laws of Washington.

30 (~~(4)~~) (5) The court administrator shall verify the terms of any
31 existing order governing the parties. The court may not delay
32 granting relief because of the existence of a pending action between
33 the parties or the necessity of verifying the terms of an existing
34 order. A petition for an extreme risk protection order may be granted
35 whether or not there is a pending action between the parties. Relief
36 under this chapter must not be denied or delayed on the grounds that
37 relief is available in another action.

38 (~~(5)~~) (6) If the petitioner is a law enforcement officer or
39 agency, the petitioner shall make a good faith effort to provide
40 notice to a family or household member of the respondent and to any

1 known third party who may be at risk of violence. The notice must
2 state that the petitioner intends to petition the court for an
3 extreme risk protection order or has already done so, and include
4 referrals to appropriate resources, including ~~((mental))~~ behavioral
5 health, domestic violence, and counseling resources. The petitioner
6 must attest in the petition to having provided such notice, or attest
7 to the steps that will be taken to provide such notice.

8 ~~((+6))~~ (7) If the petition states that disclosure of the
9 petitioner's address would risk harm to the petitioner or any member
10 of the petitioner's family or household, the petitioner's address may
11 be omitted from all documents filed with the court. If the petitioner
12 has not disclosed an address under this subsection, the petitioner
13 must designate an alternative address at which the respondent may
14 serve notice of any motions. If the petitioner is a law enforcement
15 officer or agency, the address of record must be that of the law
16 enforcement agency.

17 ~~((+7))~~ (8) Within ninety days of receipt of the master copy from
18 the administrative office of the courts, all court clerk's offices
19 shall make available the standardized forms, instructions, and
20 informational brochures required by RCW 7.94.150. Any assistance or
21 information provided by clerks under this section does not constitute
22 the practice of law and clerks are not responsible for incorrect
23 information contained in a petition.

24 ~~((+8))~~ (9) No fees for filing or service of process may be
25 charged by a court or any public agency to petitioners seeking relief
26 under this chapter. Petitioners shall be provided the necessary
27 number of certified copies, forms, and instructional brochures free
28 of charge.

29 ~~((+9))~~ (10) A person is not required to post a bond to obtain
30 relief in any proceeding under this section.

31 ~~((+10))~~ (11) The superior courts of the state of Washington have
32 jurisdiction over proceedings under this chapter. The juvenile court
33 may hear a proceeding under this chapter if the respondent is under
34 the age of eighteen years. Additionally, district and municipal
35 courts have limited jurisdiction over issuance and enforcement of ex
36 parte extreme risk protection orders issued under RCW 7.94.050. The
37 district or municipal court shall set the full hearing provided for
38 in RCW 7.94.040 in superior court and transfer the case. If the
39 notice and order are not served on the respondent in time for the

1 full hearing, the issuing court has concurrent jurisdiction with the
2 superior court to extend the ex parte extreme risk protection order.

3 (12) (a) Any person restrained by an extreme risk protection order
4 against a respondent under the age of eighteen may petition the court
5 to have the court records sealed from public view at the time of
6 issuance of the full order, at any time during the life of the order,
7 or at any time after its expiration.

8 (b) The court shall seal the court records from public view if
9 there are no other active protection orders against the restrained
10 party, no pending violations of the order, and evidence of full
11 compliance with the relinquishment of firearms as ordered by the
12 extreme risk protection order.

13 (c) Nothing in this subsection changes the requirement for the
14 order to be entered into and maintained in computer-based systems as
15 required in RCW 7.94.110.

16 (13) The court shall give law enforcement priority at any extreme
17 risk protection order calendar because of the importance of immediate
18 temporary removal of firearms in situations of extreme risk and the
19 goal of minimizing the time law enforcement must otherwise wait for a
20 particular case to be called, which can hinder their other patrol and
21 supervisory duties. In the alternative, the court may allow a law
22 enforcement petitioner to participate telephonically, or allow
23 another representative from that law enforcement agency or the
24 prosecutor's office to present the information to the court if
25 personal presence of the petitioning officer is not required for
26 testimonial purposes.

27 (14) Recognizing that an extreme risk protection order may need
28 to be issued outside of normal business hours, courts shall allow law
29 enforcement petitioners to petition after-hours for an ex parte
30 extreme risk protection order using an on-call, after-hours judge, as
31 is done for approval of after-hours search warrants.

32 **Sec. 4.** RCW 7.94.040 and 2017 c 3 s 5 are each amended to read
33 as follows:

34 (1) Upon receipt of the petition, the court shall order a hearing
35 to be held not later than fourteen days from the date of the order
36 and issue a notice of hearing to the respondent for the same.

37 (a) The court may schedule a hearing by telephone pursuant to
38 local court rule, to reasonably accommodate a disability, or in
39 exceptional circumstances to protect a petitioner from potential

1 harm. The court shall require assurances of the petitioner's identity
2 before conducting a telephonic hearing.

3 (b) The court clerk shall cause a copy of the notice of hearing
4 and petition to be forwarded on or before the next judicial day to
5 the appropriate law enforcement agency for service upon the
6 respondent.

7 (c) Personal service of the notice of hearing and petition shall
8 be made upon the respondent by a law enforcement officer not less
9 than five court days prior to the hearing. Service issued under this
10 section takes precedence over the service of other documents, unless
11 the other documents are of a similar emergency nature. If timely
12 personal service cannot be made, the court shall set a new hearing
13 date and shall either require additional attempts at obtaining
14 personal service or permit service by publication or mail as provided
15 in RCW 7.94.070. The court shall not require more than two attempts
16 at obtaining personal service and shall permit service by publication
17 or mail after two attempts at obtaining personal service unless the
18 petitioner requests additional time to attempt personal service. If
19 the court issues an order permitting service by publication or mail,
20 the court shall set the hearing date not later than twenty-four days
21 from the date the order issues.

22 (d) The court may, as provided in RCW 7.94.050, issue an ex parte
23 extreme risk protection order pending the hearing ordered under this
24 subsection (1). Such ex parte order must be served concurrently with
25 the notice of hearing and petition.

26 (2) Upon hearing the matter, if the court finds by a
27 preponderance of the evidence that the respondent poses a significant
28 danger of causing personal injury to self or others by having in his
29 or her custody or control, purchasing, possessing, or receiving a
30 firearm, the court shall issue an extreme risk protection order for a
31 period of one year.

32 (3) In determining whether grounds for an extreme risk protection
33 order exist, the court may consider any relevant evidence including,
34 but not limited to, any of the following:

35 (a) A recent act or threat of violence by the respondent against
36 self or others, whether or not such violence or threat of violence
37 involves a firearm;

38 (b) A pattern of acts or threats of violence by the respondent
39 within the past twelve months including, but not limited to, acts or
40 threats of violence by the respondent against self or others;

1 (c) Any (~~dangerous mental health issues of the respondent~~)
2 behaviors that present an imminent threat of harm to self or others;
3 (d) A violation by the respondent of a protection order or a no-
4 contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99,
5 26.50, or 26.52 RCW;
6 (e) A previous or existing extreme risk protection order issued
7 against the respondent;
8 (f) A violation of a previous or existing extreme risk protection
9 order issued against the respondent;
10 (g) A conviction of the respondent for a crime that constitutes
11 domestic violence as defined in RCW 10.99.020;
12 (h) The respondent's ownership, access to, or intent to possess
13 firearms;
14 (i) The unlawful or reckless use, display, or brandishing of a
15 firearm by the respondent;
16 (j) The history of use, attempted use, or threatened use of
17 physical force by the respondent against another person, or the
18 respondent's history of stalking another person;
19 (k) Any prior arrest of the respondent for a felony offense or
20 violent crime;
21 (l) Corroborated evidence of the abuse of controlled substances
22 or alcohol by the respondent; and
23 (m) Evidence of recent acquisition of firearms by the respondent.
24 (4) The court may:
25 (a) Examine under oath the petitioner, the respondent, and any
26 witnesses they may produce, or, in lieu of examination, consider
27 sworn affidavits of the petitioner, the respondent, and any witnesses
28 they may produce; and
29 (b) Ensure that a reasonable search has been conducted for
30 criminal history records related to the respondent.
31 (5) In a hearing under this chapter, the rules of evidence apply
32 to the same extent as in a domestic violence protection order
33 proceeding under chapter 26.50 RCW.
34 (6) During the hearing, the court shall consider whether a
35 (~~mental~~) behavioral health evaluation (~~or chemical dependency~~
36 ~~evaluation~~) is appropriate, and may order such evaluation if
37 appropriate.
38 (7) An extreme risk protection order must include:
39 (a) A statement of the grounds supporting the issuance of the
40 order;

1 (b) The date and time the order was issued;

2 (c) The date and time the order expires;

3 (d) Whether a ((mental)) behavioral health evaluation ((~~or~~
4 ~~chemical dependency evaluation~~)) of the respondent is required;

5 (e) The address of the court in which any responsive pleading
6 should be filed;

7 (f) A description of the requirements for relinquishment of
8 firearms under RCW 7.94.090; and

9 (g) The following statement: "To the subject of this protection
10 order: This order will last until the date and time noted above. If
11 you have not done so already, you must surrender to the (insert name
12 of local law enforcement agency) all firearms in your custody,
13 control, or possession and any concealed pistol license issued to you
14 under RCW 9.41.070 immediately. You may not have in your custody or
15 control, purchase, possess, receive, or attempt to purchase or
16 receive, a firearm while this order is in effect. You have the right
17 to request one hearing to terminate this order every twelve-month
18 period that this order is in effect, starting from the date of this
19 order and continuing through any renewals. You may seek the advice of
20 an attorney as to any matter connected with this order."

21 (8) When the court issues an extreme risk protection order, the
22 court shall inform the respondent that he or she is entitled to
23 request termination of the order in the manner prescribed by RCW
24 7.94.080. The court shall provide the respondent with a form to
25 request a termination hearing.

26 (9) If the court declines to issue an extreme risk protection
27 order, the court shall state the particular reasons for the court's
28 denial.

29 **Sec. 5.** RCW 7.94.060 and 2017 c 3 s 7 are each amended to read
30 as follows:

31 (1) An extreme risk protection order issued under RCW 7.94.040
32 must be personally served upon the respondent, except as otherwise
33 provided in this chapter.

34 (2) The law enforcement agency with jurisdiction in the area in
35 which the respondent resides shall serve the respondent personally,
36 unless the petitioner elects to have the respondent served by a
37 private party.

38 (3) If service by a law enforcement agency is to be used, the
39 clerk of the court shall cause a copy of the order issued under this

1 chapter to be forwarded on or before the next judicial day to the law
2 enforcement agency specified in the order for service upon the
3 respondent. Service of an order issued under this chapter takes
4 precedence over the service of other documents, unless the other
5 documents are of a similar emergency nature.

6 (4) If the law enforcement agency cannot complete service upon
7 the respondent within ten days, the law enforcement agency shall
8 notify the petitioner. The petitioner shall provide information
9 sufficient to permit such notification.

10 (5) If an order entered by the court recites that the respondent
11 appeared in person before the court, the necessity for further
12 service is waived and proof of service of that order is not
13 necessary.

14 (6) If the court previously entered an order allowing service of
15 the notice of hearing and petition, or an ex parte extreme risk
16 protection order, by publication or mail under RCW 7.94.070, or if
17 the court finds there are now grounds to allow such alternate
18 service, the court may permit service by publication or mail of the
19 extreme risk protection order issued under this chapter as provided
20 in RCW 7.94.070. The court order must state whether the court
21 permitted service by publication or service by mail.

22 (7) (a) When an extreme risk protection order is issued against a
23 minor under the age of eighteen, a copy of the order must be served
24 on the parent or guardian of the minor at any address where the minor
25 resides.

26 (b) The court shall advise the parent or guardian in writing of
27 the legal obligation to safely secure any firearm on the premises and
28 the potential for criminal prosecution if a prohibited person were to
29 obtain access to the firearm as provided in RCW 9.41.360. Notice may
30 be provided at the time the parent or guardian of the respondent
31 appears in court or may be served along with a copy of the order.

32 (8) Returns of service under this chapter must be made in
33 accordance with the applicable court rules.

34 **Sec. 6.** RCW 7.94.150 and 2017 c 3 s 16 are each amended to read
35 as follows:

36 (1) The administrative office of the courts shall develop and
37 prepare instructions and informational brochures, standard petitions
38 and extreme risk protection order forms, and a court staff handbook
39 on the extreme risk protection order process. The standard petition

1 and order forms must be used after June 1, 2017, for all petitions
2 filed and orders issued under this chapter. The instructions,
3 brochures, forms, and handbook shall be prepared in consultation with
4 interested persons, including representatives of gun violence
5 prevention groups, judges, and law enforcement personnel. Materials
6 must be based on best practices and available electronically online
7 to the public.

8 (a) The instructions must be designed to assist petitioners in
9 completing the petition, and must include a sample of a standard
10 petition and order for protection forms.

11 (b) The instructions and standard petition must include a means
12 for the petitioner to identify, with only lay knowledge, the firearms
13 the respondent may own, (~~possesses~~ [~~possess~~]) possess, receive, or
14 have in his or her custody or control. The instructions must provide
15 pictures of types of firearms that the petitioner may choose from to
16 identify the relevant firearms, or an equivalent means to allow
17 petitioners to identify firearms without requiring specific or
18 technical knowledge regarding the firearms.

19 (c) The informational brochure must describe the use of and the
20 process for obtaining, modifying, and terminating an extreme risk
21 protection order under this chapter, and provide relevant forms.

22 (d) The extreme risk protection order form must include, in a
23 conspicuous location, notice of criminal penalties resulting from
24 violation of the order, and the following statement: "You have the
25 sole responsibility to avoid or refrain from violating this order's
26 provisions. Only the court can change the order and only upon written
27 application."

28 (e) The court staff handbook must allow for the addition of a
29 community resource list by the court clerk.

30 (2) All court clerks may create a community resource list of
31 crisis intervention, (~~mental~~) behavioral health, (~~substance~~
32 ~~abuse~~) interpreter, counseling, and other relevant resources
33 serving the county in which the court is located. The court may make
34 the community resource list available as part of or in addition to
35 the informational brochures described in subsection (1) of this
36 section.

37 (3) The administrative office of the courts shall distribute a
38 master copy of the petition and order forms, instructions, and
39 informational brochures to all court clerks and shall distribute a
40 master copy of the petition and order forms to all superior,

1 district, and municipal courts. Distribution of all documents shall,
2 at a minimum, be in an electronic format or formats accessible to all
3 courts and court clerks in the state.

4 (4) For purposes of this section, "court clerks" means court
5 administrators in courts of limited jurisdiction and elected court
6 clerks.

7 (5) The administrative office of the courts shall determine the
8 significant non-English-speaking or limited-English-speaking
9 populations in the state. The administrator shall then arrange for
10 translation of the instructions and informational brochures required
11 by this section, which shall contain a sample of the standard
12 petition and order for protection forms, into the languages spoken by
13 those significant non-English-speaking populations and shall
14 distribute a master copy of the translated instructions and
15 informational brochures to all court clerks by December 1, 2017.

16 (6) The administrative office of the courts shall update the
17 instructions, brochures, standard petition and extreme risk
18 protection order forms, and court staff handbook as necessary,
19 including when changes in the law make an update necessary.

20 (7) Consistent with the provisions of this section, the
21 administrative office of the courts shall develop and prepare:

22 (a) A standard petition and order form for an extreme risk
23 protection order sought against a respondent under eighteen years of
24 age, titled "Extreme Risk Protection Order - Respondent Under 18
25 Years";

26 (b) Pattern forms to assist in streamlining the process for those
27 persons who are eligible to seal records relating to an order under
28 (a) of this subsection, including:

29 (i) A petition and declaration the respondent can complete to
30 ensure that requirements for public sealing have been met; and

31 (ii) An order sealing the court records relating to that order;
32 and

33 (c) An informational brochure to be served on any respondent who
34 is subject to a temporary or full order under (a) of this subsection.

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